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08/398, A29	03/03/95	MITOMI FMAN	MP10398DM-LIS

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ART UNIT	PAPER NUMBER
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05/14/96

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Office Action Summary	Application No. 08/398,629	Applicant(s) Lee M. MIDDLEMAN et al.
	Examiner John S. Hilton	Group Art Unit 3307

Responsive to communication(s) filed on 2/16/96

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-3, 6-8, 12, 13, 37, 38, 40, 42-48, 50, 51, and 63-79 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-3, 6-8, 12, 13, 37, 38, 40, 42-48, 50, 51, and 63-69 is/are rejected.

Claim(s) 70-79 is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- Notice of References Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Part III DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

2. **Claims 1-3, 6-8, 12, 13, 37, 38, 40, 42-48, 50, 51 and 63-69 are rejected under 35 U.S.C. § 103 as being unpatentable over Demeter in view of Dulebohn.**

Demeter teaches the use of surgical device/pouch (figure 1) having a bag/barrier/sheet (19), actuating means that automatically opens the bag (as broadly claimed; column 6, line 62 et seq.), hollow housing (17) and handles (column 5, lines 48-54).

Dulebohn teaches the use of a surgical device that uses a shape memory material (nitinol; column 5, lines 60-66).

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It would have been obvious to modify the surgical device taught by Demeter to include the material type taught by Dulebohn so that the device may be more elastic and stronger.

Allowable Subject Matter/Interference

3. Claims 70-79 are allowable but are objected to as reciting limitations that may be subject to consideration as a interference. Presently all of the pertinent cases are being reviewed and decision is pending regarding envoking a interference.

Response to Amendment

4. Applicant's arguments filed 9/11/96 have been fully considered but they are not deemed to be persuasive.

5. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to John Hilten at telephone number (703) 308-0719.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0858.

JSH
May 13, 1996


JOHN S. HILLEN
PRIMARY EXAMINER
GROUP 3300